

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 v.) CRIM. NO. 99-10310-NG
)
 ARTHUR L. PIMENTAL and)
 LORETTA R. PIMENTAL,)
 Defendants.)
 GERTNER, D.J.

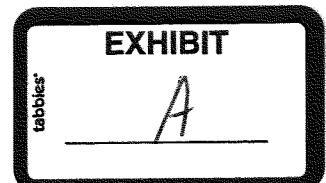
SENTENCING MEMORANDUM

April 15, 2005

Arthur and Loretta Pimental owned and maintained a small, "mom and pop" construction business. They were accused of conspiring to misrepresent the nature of their construction work and the size of their payroll in order to obtain lower premiums for Workers' Compensation insurance from 1993 through 1998.¹ The charges were mail fraud and conspiracy, even though remedies -- including civil remedies -- for such conduct are available in the state courts. As of the time of the sentencing, no civil remedies had been pursued by the "victim" insurers.

Loretta and Arthur Pimental were charged with eleven counts of mail fraud (Counts 2-15) and a single count of conspiracy.

¹ This case arises from one of several prosecutions brought in Massachusetts by the United States Attorney's Office at the behest of the Insurance Fraud Board of Massachusetts ("IFB"), a state-chartered but privately maintained organization created to investigate and police insurance fraud. The IFB investigation that culminated in these charges was substantially assisted by the local Ironworkers' Union, which arranged and housed meetings between IFB investigators and former employees of Pimental. Indeed, there is some suggestion in the evidence that the union facilitated the investigation in retaliation for the fact that Pimental ran a non-union shop.



Guidelines are presumptively reasonable, see Wilson I and Wilson II, carefully considered, see United States v. Jaber, ___ F. Supp. 2d __, 2005 WL 605787 (D. Mass, 2005), or something in between, see United States v. Crosby, 397 F.3d 103 (2d Cir. 2005), they continue to play a critical role. Certain facts like the amount of loss continue to assume inordinate importance in the sentencing outcome. So long as they do, they should be tested by our highest standard of proof.

In effect, the impact of the case law on sentencing from Apprendi to Booker is anomalous. It has added both more flexibility and more formality to the sentencing process. The Booker remedy decision made the Guidelines advisory, i.e. more flexible. But the principal decision in that case and those that had foreshadowed it reflected the Court's new concern with the formal procedures for determining facts essential to sentencing.

Indeed, even if the Sixth Amendment's jury trial guarantee is not directly implicated because the regime is no longer a mandatory one, the Fifth Amendment's Due Process requirement is. See, e.g., United States v. Nixon, 418 U.S. 683, 711 (1974) ("The Fifth Amendment [] guarantees that no person shall be deprived of liberty without due process of law It is the manifest duty of the courts to vindicate those guarantees.").²¹ Certain

²¹ As I noted in What Has Harris Wrought?, 15 Fed. Sent. R. 83, at *1 (Dec. 2002), writing about the implications of Harris v. United States, 536 U.S. 122 (2002): "The Court's approach is 'all or nothing': if there is no

facts are significant, whether or not they play a dispositive role. See, e.g., United States v. Huerta-Rodriguez, 355 F. Supp. 2d 1019, 1027 (D. Neb. 2005) (finding that “[i]n order to comply with due process in determining a reasonable sentence, this court will require that a defendant is afforded procedural protections under the Fifth and Sixth Amendments in connection with any facts on which the government seeks to rely to increase a defendant’s sentence”); id. at 1027 n.8 (“This approach may not be mandated by Booker, but it is not inconsistent with, nor prohibited by, Booker.”).

We cannot have it both ways: We cannot say that facts found by the judge are only advisory, that as a result, few procedural protections are necessary and also say that the Guidelines are critically important. If the Guidelines continue to be important, if facts the Guidelines make significant continue to be extremely relevant, than Due Process requires procedural safeguards and a heightened standard of proof, namely, proof beyond a reasonable doubt.

3. The Relationship Between the Counts of Conviction and the Scheme Alleged

jury trial, the ‘all’ of our criminal justice system, there is next to ‘nothing,’ the comparative informality of sentencing. But, in my view, even if facts that lead to mandatory minimum sentences need not be litigated before juries, they should, at the very least, be litigated in a setting of heightened due process protections.”

federal law enforcement authorities. And it is surely unimaginable that Pimental would repeat this behavior. There was no issue of workers' safety that I was in a position to address in a sentencing proceeding, nor is there any question that this punishment fits the crime of conviction.

SO ORDERED.

Date: April 15, 2005

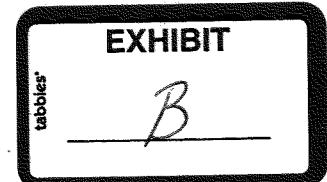
/s/NANCY GERTNER, U.S.D.J.

Your Honorable Judge Caldwell,

I am writing this letter in hopes to express myself a little better then I could during my court hearing that is approaching. I have yet to be informed on what can and can't happen, so this letter is not a plea but more, a release.

I have currently been incarcerated for 55 months and I must admit, each day has taught me a little more. At first I was angry. My mother, you, God basically anybody I could point my finger at was the basis for my anger.

Over time though, I learned the only one I needed to be angry at was me and my actions. Now I just recognize my mistakes and take what



I can and learn from them.

My actions in Society were wrong. Today I accept everything that has been dealt to me in life and truly understand the meaning of "For every action there is a reaction."

You probably haven't heard "thank you" so often in your line of work, but I truly do thank you.

Over these years I've grown up. I would like to have the chance to enter Society and start over with the lessons of life I've been blessed to learn.

Thank you, Your Honor, for your time.

Respectfully,
Chelsea L. Yocum

Maureen G. Miller
Landscape Management Technician
Education Department
F.C.I. Danbury, Connecticut 06811

Date: November 2, 2004

To: Mr. Thomas Zaborowski
Education Coordinator

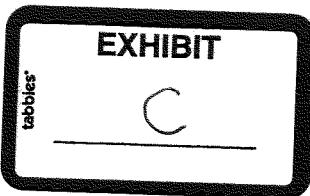
Reply to
Attn. Of: Maureen G. Miller, Vocational Trade Instructor

Subject: Yocum, Chelsea, Registration #10623-067

Mr. Zaborowski:

This memorandum serves to inform you that Ms. Yocum has successfully completed the Landscape Management Technician course. She has obtained the required 2000 hours of on-the-job training, and has done so with outstanding achievement. Mr. Zaborowski, before entering into the V.T. Apprenticeship program, Ms. Yocum first completed the V.T. Horticulture 1300 hour Program. Hours compiled of 70 hours in the Exploratory Phase, 615 hours in the Indoor/Outdoor Plantscaping Phase, and 615 hours in the Greenhouse Maintenance and Floral Design Phase. Ms. Yocum completed the V.T. Horticulture Program November 3, 2003 with a 95% overall average. Noting that a 75% average is required of each student, as set forth by the Education Supervisor, Ms. Dianne Wilson.

On September 26, 2002, Ms. Yocum entered into the Landscape Apprenticeship course which details future advancing previous skills obtained in the V.T. Horticulture Program. Ms. Yocum successfully performed all required on-the-job training skills listed by the U.S. Department of Labor Bureau of Apprenticeship and Training. Each task was overseen and graded on skill, performance and capability by me.



This Certificate is hereby
presented to

Chelsea Docom

for successfully completing the
V.T. Horticulture 70 Hour
"Exploratory Phase"

This Certificate presented this 23rd day of September 2002

Maureen G. Miller

Maureen G. Miller, VT Horticulture Instructor

Dianne Wilson

Dianne Wilson, Supervisor of Education

EXHIBIT

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Certificate of Completion
is hereby presented to

Chelsea Yocum

For successfully completing 615 hours of Phase I - Interior and Exterior
Plantscaping in the "Vocational Trade Horticulture Program"

Presented this 10th of March 2003

Maureen Miller
Maureen Miller
V.T. Horticulture Instructor

Dianne Wilson
Dianne Wilson
Supervisor of Education

EXHIBIT

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Certificate of Completion

Awarded To

Chelsea Yocum

For successfully completing 1300 hours of practical training
and academic achievement in the Vocational Trade

Horticulture Program. Congratulations!

This certificate is hereby issued this 11th day of July 2003.

Maryann G. Miller
Maryann G. Miller, V.T. Instructor

Dianne Wilson
Dianne Wilson, Supervisor of Education

EXHIBIT

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Certificate of Completion

is hereby presented to

Chelsea Yacht

For successfully completing 615 hours of Phase 2 - Greenhouse Management and Floral Designing in the "Vocational Trade Horticulture Program"

Presented this 11th day of July 2003.

Maureen Miller
V.T. Horticulture Instructor

Supervisor of Education

Dianne Wilson

Dianne Wilson
Supervisor of Education



Certificate of Completion

Awarded To

Melissa Yocom

For successfully completing 2000 hours of practical training and academic achievement
in the Landscape Management Technician Apprenticeship Program.

Congratulations!

This certificate is hereby issued this 4th day of November 2003.

Maureen G. Miller

Maureen G. Miller, V.T. Instructor

Dianne Wilson

Dianne Wilson, Supervisor of Education

EXHIBIT

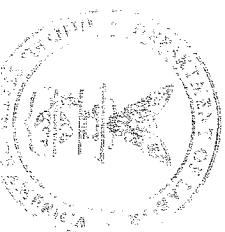
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Tables

John M. Grifkin

ATELS Regional Director

November 2, 2004

Date Completed



Office of Apprenticeship Training, Employer and Labor Services
Bureau of Apprenticeship and Training
Certificate of Completion of Apprenticeship
This is to certify that
CHELSEA YOCUM
has completed an apprenticeship for the occupation
LANDSCAPE MANAGEMENT TECHNICIAN
under the sponsorship of
DANBURY, CONNECTICUT
in accordance with the basic standards of apprenticeship
established by the Secretary of Labor

John M. Grifkin

Secretary of Labor

John M. Grifkin

Administrator, Apprenticeship Training, Employer and Labor Services

EXHIBIT H



BLACKSTONE CAREER INSTITUTE

218 MAIN STREET, P.O. BOX 899, EMMAUS, PA 18049

September 12, 2003

Chelsea Yocum 10623-067
FCI Danbury
Pembroke Station
Danbury CT 06811-3099

Dear Chelsea:

I am writing to personally welcome you to Blackstone Career Institute Studies. On behalf of the Education Department, I want you to know that we are pleased you made the decision to enroll with us and that we will do everything in our power to make your studies the best school experience you've ever had. I have been fortunate to spend my professional career helping students like you, so I've seen first hand just how much people really do benefit from our programs. I am especially glad to see that you have enrolled in our Legal Assistant/Paralegal program.

The lessons you will study are structured very well. I want you to know that whenever you have a question, we want you to ask us about it. The staff here is always anxious to communicate with and to help students. Remember though, you need to let us know when we can help and how. We depend on you to keep us informed.

Well, your records here at the school are all set up. Your lessons were sent to you. It's time now to make a difference in your own life. It's time to take advantage of this opportunity and make a difference in your knowledge, your skills, your security, and your future. Set up a schedule for yourself that allows you to study regularly. Make studying something you always have time for. Regular study habits will pay big dividends in your ability to learn and make progress in the program. The sooner you begin the easier it will be for you to make progress, enjoy the program, and benefit from the material. If you've sent in an exam and it crossed with this letter in the mail, congratulations and I'll be looking for it. If not, pick up your lessons tonight and send in an exam tomorrow.

I'll keep in touch and I hope to hear from you. Good luck, and have fun!

Sincerely,

Stacy Queen

Stacy Queen
Education Department





BLACKSTONE CAREER INSTITUTE

218 MAIN STREET, P.O. BOX 899, EMMAUS, PA 18049

GRADE REPORT

September 11, 2003

Chelsea Yocum 10623-067

Student #: 01009900

FCI Danbury

Pembroke Station

Danbury CT 06811-3099

Dear Chelsea:

The grade(s) indicated below were entered into your permanent academic record today. Your answer sheet will be retained by the school for 30 days should you have any questions regarding it.

If you find review references below, you will want to go back to these references and review the material. While you did receive a passing grade, we want to be sure you have the fullest possible understanding of this subject. By reviewing the areas of your lesson indicated below, you should further understand those questions you did not answer correctly.

Please note: Any references below with an answer of 'O' are questions you did not supply an answer for when you submitted your exam. Skipped questions adversely affect your exam grade. Please try your hardest to answer every question on future exams.

EXAM0101 PARALEGAL EXAM #1				95%
Ques #	Your Ansr/Pts	Corr Ansr/Max	Reference	
16	A	B	p. 5 "Meaning of Law"	

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BLACKSTONE CAREER INSTITUTE

218 MAIN STREET, P.O. BOX 899, EMMAUS, PA 18049

GRADE REPORT

April 1, 2005

Chelsea Yocum 10623-067
 FCI Danbury
 Pembroke Station
 Danbury CT 06811-3099

Student #: 01009900

Dear Chelsea:

The grade(s) indicated below were entered into your permanent academic record today. Your answer sheet will be retained by the school for 30 days should you have any questions regarding it.

If you find review references below, you will want to go back to these references and review the material. While you did receive a passing grade, we want to be sure you have the best possible understanding of this subject matter. This is a learning tool supplied by Blackstone to help our students better understand the course material. By reviewing the areas of your lesson indicated, you should further understand those questions you did not answer correctly.

Please note: Any references below with an answer of 'O' are questions you did not supply an answer for when you submitted your exam. Skipped questions adversely affect your exam grade. Please try your hardest to answer every question on future exams.

EXAM0123

PARALEGAL EXAM #23

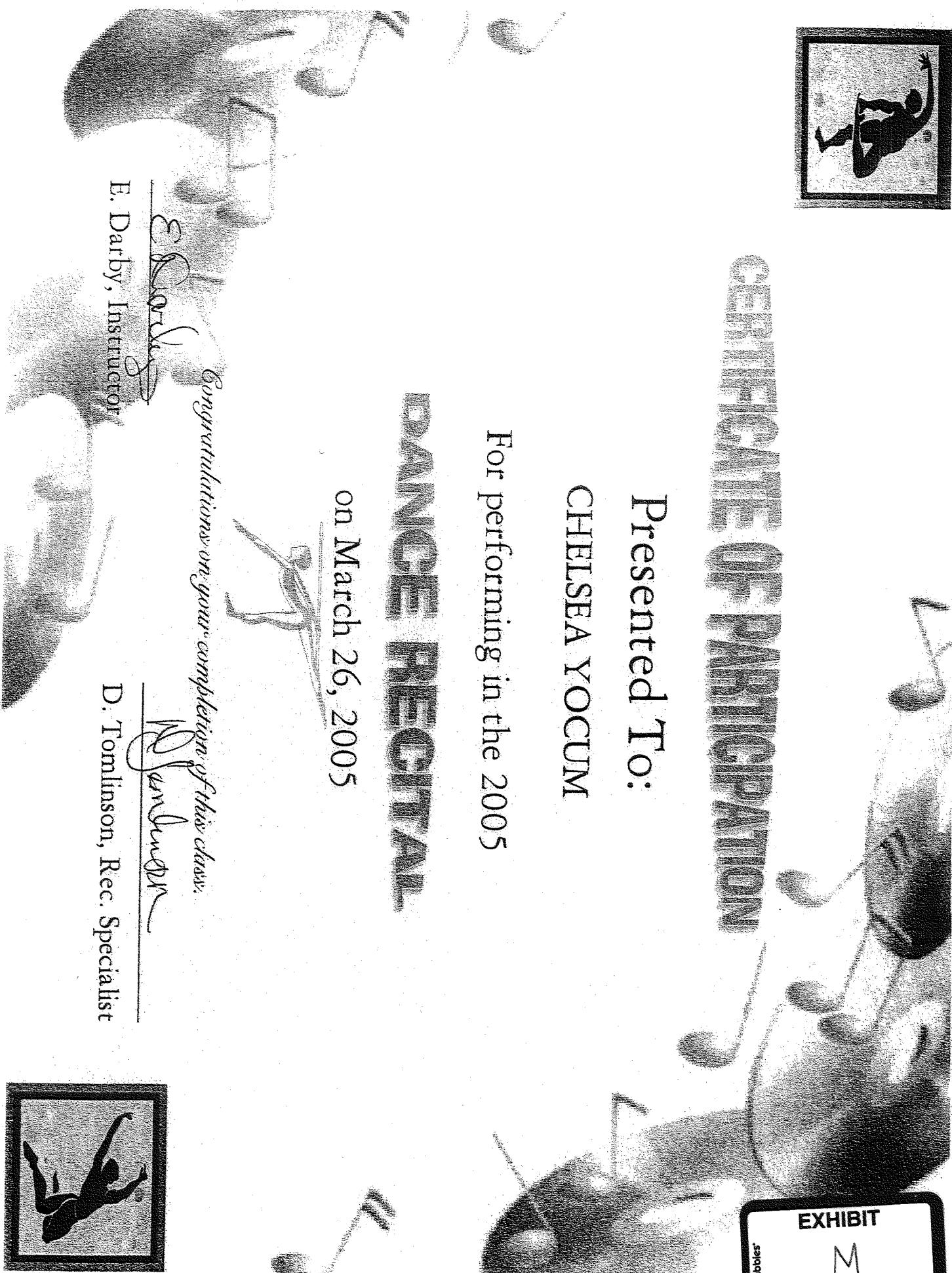
95%

Ques #	Your Ansr/Pts	Corr Ansr/Max	Reference
18	A	B	p. 117 "Relation between Creditor and..."

EXHIBIT

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CERTIFICATE OF MERIT

Presented to:
Chelsea Yocum

For successfully completing the

Cardioaerobics Class

This certificate is hereby presented this 31st day of January 2005

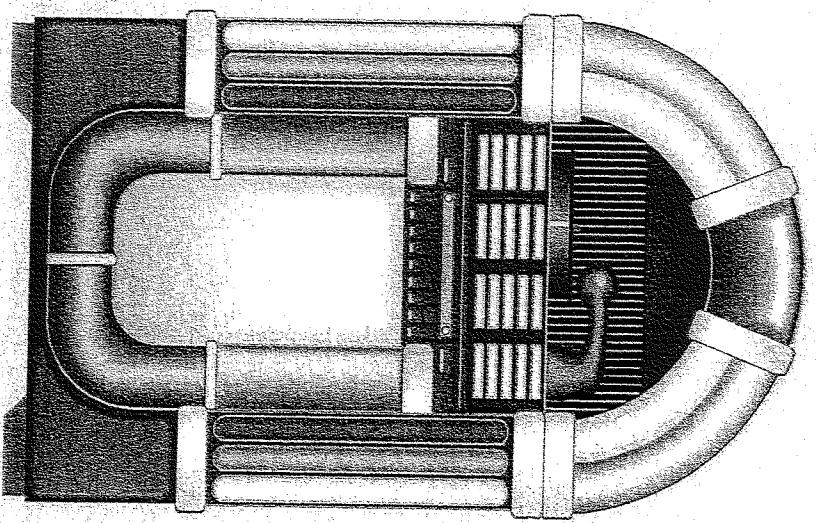
T. Francis

T. Francis, Instructor

EXHIBIT

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PARTICIPATION
IN THE 2005
RECREATION
DEPARTMENT
TALENT SHOW



Event Date:

MARCH 5, 2005

Location:

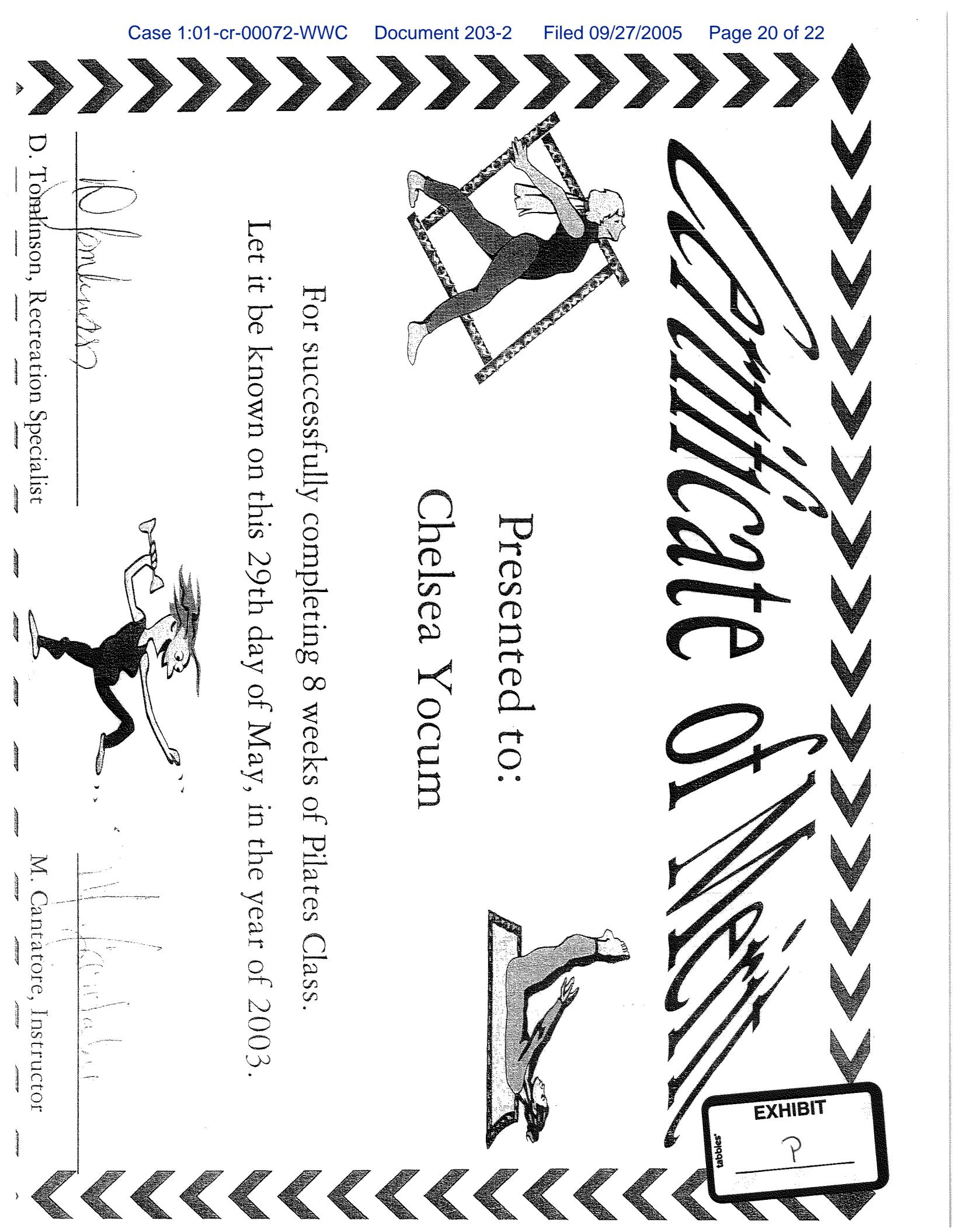
AUDITORIUM
M. Wilson
M. WILSON, REC.

SPEC.

CHELSEA YOCUM

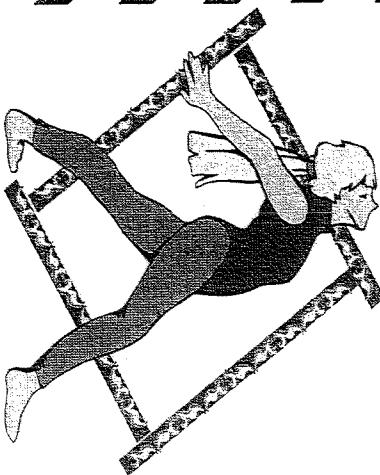
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certificate of completion

EXHIBIT



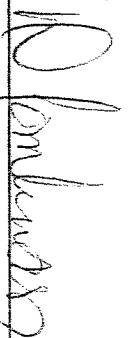
Presented to:

Chelsea Yocum



For successfully completing 8 weeks of Pilates Class.

Let it be known on this 29th day of May, in the year of 2003.


D. Tomlinson

M. Cantatore, Instructor

Certificate of Completion

Presented to

Chelsea Yocum

For completion of the Drug and Alcohol Education Program
at the Federal Correctional Institution,
Danbury, Connecticut, on July 1, 2003



Randall M. Petagine
Drug Treatment Specialist



Michele D. Walsher, Psy.D
Drug Abuse Program Coordinator

EXHIBIT

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CUMBERLAND COUNTY PRISON
1101 CLAREMONT ROAD
CARLISLE PA 17013

Sept.5, 2005

To Whom It May Concern:

Miss Yocum senesce she has been here has been an asset to our operation . She is very knowledgeable, resourceful, productive, cooperative and energetic. She thrives on learning new things, is self-motivated and a pleasure to have around. She always gives 110 percent to all of the duties assigned to her. Miss Yocum seems to have a good attitude and is a hard worker. If circumstances were different, I would be honored to have her on my staff.

Sincerely,



Mike Rickard
Food Service Director
Cumberland County Prison

MR/wwe

